
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH,
CENTRAL DIVISION

DEAN H. CHRISTENSEN,

Plaintiff,

v.

DON ROGER NORMAN, an individual;
WILLIAM ROGER WILLIAM NORMAN,
an individual, CINDY GAGLIANO, an
individual,

Defendants.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Case No. 2:17-cv-1283-RJS-BCW

Judge Robert J. Shelby

Magistrate Judge Brooke C. Wells

This case was referred to Magistrate Judge Brooke C. Wells pursuant to 28 U.S.C. § 636(b)(1)(B). Defendants Don Roger Norman and Cindy Gagliano filed a motion to dismiss the claims against them for failure of service.¹ Judge Wells recommended the court grant the Motion.² Plaintiff Dean H. Christensen timely objected solely on the grounds that the claims should be dismissed without prejudice.³

The court agrees that the claims should be dismissed without prejudice and notes that this is in fact in line with Judge Wells' recommendation.⁴

¹ Dkt. 25.

² Dkt. 33.

³ Dkt. 34.

⁴ See Dkt. 33 (“[T]he court has no choice but to recommend dismissing the complaint against Norman and Gagliano without prejudice.”).

Because Christensen did not object to the substance of Judge Wells' recommendation, a "clearly erroneous" standard of review applies. Under this deferential standard, the court will affirm Judge Wells' ruling unless it "is left with the definite and firm conviction that a mistake has been committed."⁵

After reviewing the record, the court concludes Judge Wells did not clearly err in finding Christensen failed to provide adequate proof of service for Don Roger Norman or Cindy Gagliano. Rule 4(m) of the Federal Rules of Civil Procedure therefore compels the Complaint be dismissed without prejudice against those defendants.

The court ADOPTS Judge Wells' Report and Recommendation and DISMISSES the claims against Don Roger Norman and Cindy Gagliano without prejudice.

SO ORDERED this 5th day of June, 2018.

BY THE COURT:



ROBERT J. SHELBY
United States District Judge

⁵ *Ocelot Oil Corp. v. Sparrow Indus.*, 847 F.2d 1458, 1464 (10th Cir. 1988) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).